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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.675/2004

Appellant (Accused) — Sagar Lakda

VERSUS

Respondents (Complainant) — State of Chhattisgarh & another

And

CRIMINAL APPEAL NO.804/2004

Appellant (Accused) — Arjun Yadav

VERSUS

Respondents (Complainant) — State of Chhattisgarh & another

JUDGMENT

POST ON 3rd OCTOBER 2007

Sd/-
DHIRENDRA MISHRA
Judge

2. 10.2007

(46)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.675/2004

Appellant (Accused)		Sagar Lakda, aged 20 years, Son of Sermon Lakda, Resident of Village Pakaritoli, P.S.H. Sanna (Chowli Asta) Distt. Jashpur (C.G.)
	VERSUS	
Respondents (Complainant)	1.	State of Chhattisgarh Through District Magistrate, Jashpur (CG)
	2.	Filomon Toppo, Resident of Village Sukardeah, P.S.H. Sanna (Chowli Asta) Distt. Jashpur (C.G.)

And

CRIMINAL APPEAL NO.804/2004

Appellant (Accused)		Arjun Yadav, aged 20 years, Son of Phiran Yadav, Resident of Village Toga Khakhra, P.S.H. Sanna (Chowli Asta) Distt. Jashpur (C.G.)
	VERSUS	
Respondents (Complainant)	1.	State of Chhattisgarh Through District Magistrate, Jashpur (CG)
	2.	Filomon Toppo, Resident of Village Sukardeah, P.S.H. Sanna (Chowli Asta) Distt. Jashpur (C.G.)

Present:

Mr. Ram Kumar Tiwari counsel for the appellants.
Mr. Sandeep Yadav, Dy G.A. for the State/respondent.

JUDGMENT

(3 October 2007)

Dhirendra Mishra, J

Criminal Appeal No. 675/04 preferred by appellant Sagar Lakda and Criminal Appeal No.804/04 preferred by appellant Arjun Yadav are being disposed of by this common judgment as both these appeals are directed against the judgment of conviction and order of sentence dated 12th December 2003 passed in Special Case No. 21/03 whereby learned

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Special Court, [constituted under Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989] Sessions Judge, Jashpur has convicted each of the appellants under Section 376(2) (g) of the IPC and sentenced them to undergo RI for 10 years and pay a fine of Rs.10,000/-, in default of payment of fine to undergo additional RI for six months.

2. Case of the prosecution, in brief, is that on 9.2.2002 at about 7.00 p.m. the prosecutrix (PW-1) lodged a report at Police Out Post – Asta mentioning therein that on 7.2.2002 at about 5.00 p.m. when she was returning from her school with her friends Alka Ekka, Shobha Kujur, Anjali Nurpanna, Aruna Tirki and Mamta Kujur on foot, the appellants forcibly caught her and dragged her towards Hathitongri and thereafter, after undressing her Arujn Yadav raped her first and after some time appellant Sagar raped her. They also warned her not to disclose this fact to anyone. However, on 8.2.2002 she disclosed this incident to sister Asrita and Niskanta who called her parents to school and narrated the about incident.

3. During investigation the prosecutrix was sent for medical examination to Primary Health Center, Jashpur where Dr. (Smt.) Lata Goyal examined her and gave her report of Ex.P/15-A. Primary school certificate of Ex.P/6 and caste certificate of Ex.P/7 of the prosecutrix were taken into possession vide seizure memo of Ex.P/5. Pieces of broken bangle and alpine were seized from the place of incident vide Ex.P/12. Copy of admission register was seized vide Ex.P/13-C. Wearing apparels of the prosecutrix and her vaginal slides were taken into possessions under Ex.P/17. Underwear of accused Arjun was seized vide Ex.P/18. The accused persons were sent for medical examination to P.H.C. Jashpur and medical examination reports of accused Sagar and Arjun is Ex.P/19 and P/20, respectively. The seized articles i.e. underwear, *Simij,* vaginal slides of the prosecutrix and underwears of the accused persons were sent to Forensic Science Laboratory, Raipur for examination and report of the FSL is Ex.P/26. After completing investigation charge sheet was filed against the appellants in the Court of Judicial Magistrate First Class, Jashpur Nagar, who in turn committed the case to the Special Court, Raigarh for trial.

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4. Prosecution examined 13 witnesses in all during trial. Thereafter, statements of the accused persons were recorded in which they denied the material appearing against them in the prosecution case and pleaded innocence and false implication. However, learned trial Court after hearing counsel for the respective parties, convicted and sentenced the accused/appellants as mentioned in paragraph 1 of this judgment.

5. Learned counsel for the appellants submitted that there is delay of two days in lodging the First Information Report without any valid explanation. The version of the prosecutrix is not corroborated by the medical evidence as the prosecutrix has claimed that she was subjected to rape in the open field by two persons, however, she has not sustained any external or internal injuries on her person, which belies her contention that she was subjected to rape by the appellants. In fact, it's a case of false implication as is evident from paragraph 10 of statement of the prosecutrix where she has admitted that her sister was in love with accused Arjun and on this account, her parents were angry with him. Prakash, cousin of the prosecutrix, had eloped with a girl. However, he did not marry with her, which was objected to by Sagar and on this account the uncle of the prosecutrix was fined Rs.500/- by the Mission. The trial Court has assessed age of the prosecutrix to be below 16 years on the basis of statement of teacher Jubita Xalko (P.W.-6). However, father of the prosecutrix Filomon Toppo has stated in his cross-examination that he got married 23 years before the incident, the prosecutrix is his eldest daughter who was born after 5 years of the marriage and thus, age of the prosecutrix at the time of incident was 18 years and the basis for entry made in the school certificate has not been proved.

6. On the other hand, learned counsel for the State supported the impugned judgment of the trial Court.

7. I have heard learned counsel for both the parties and have perused the evidence available on record as also the impugned judgment.

8. Conviction of the appellants is based on the statements of the prosecutrix (P.W.-1), Ku. Anjali Nurpana (P.W. 2), Mamta Kujur (P.W.3) and Ku. Alka Ekka (P.W.4).

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9. The version of the prosecutrix also finds corroboration from the statement of Dr.(Smt.) Lata Goyal (PW-10) who examined the prosecutrix and gave report of Ex.P/15 A. The F.S.L. report regarding presence of human sperm on the seized articles is also positive.

10. Date of birth of the prosecutrix according to admission register of Ex.P/13 C is 2.3.1986 and the same is reflected in her mark sheet of Ex.P/6. She was a student of Class VIII at the time of incident. The above documents are public documents. The argument of the defence counsel that father of the prosecutrix in his deposition has stated that on the date of incident the prosecutrix was about 18 years, does not appear to be reasonable in view of the fact that answers given by this witness in his cross-examination are not supported by any documentary evidence whereas there is evidence regarding date of birth of the prosecutrix as mentioned in the public document of Ex.P/13 and Ex.P/6, which show that she was less then 16 years of age on the date of incident.

11. The prosecutrix in her deposition has stated that she was a student of Class-VIII on the date of incident, and she was returning from her school at 5:00 P.M. with Alka Ekka, Anjali Noorpana, Mamta Kujur, Sobha Kujur. When they reached near Hathi Dongari they met the appellant. Appellant Sagar caught her hand and asked her to accompany him towards Dongari Forest. She tried to free herself whereupon he called Arjun who also caught her hand and the dragged her toward Hathi Dongari. She raised an alarm, however, her friends fled from there. Thereafter, Arjun undressed her and raped her. After sometime Sagar also came and raped her. She did not narrate this incident to her parents on that day. However, on the following day she told about the incident to her teachers who advised them to tell this incident to her parents whereupon she narrated the incident to her parents and lodged report of ExP/1 thereafter. She has denied the suggestion that on the date of incident she meet Arjun and Sagar in the recess in the shop and she has further denied that she had told the accused persons that she shall be meeting them in the evning. However, she has admitted that appellant Arjun is in love with her sister Kusum and for the aforesaid reason her parents are angry with Arjun. She has categorically stated that when the accused persons were dragging her toward forest she had shouted . She has further denied the suggestion

that after the incident when she was returning, the school teacher was going by motorcycle and on seeing him she had hidden herself.

12. P.W.2, Anjali Noorpanna has deposed that on the date of incident she along with prosecutrix and other friends Rita Toppo, Alka Ekka, Mamta Kujur, Aruna Tirki and Sobha Kujur were returning from school and when they reached near Hathi Dongari they met both the accused persons on way. Reeta stayed there whereas they returned this witness has been declared hostile. And in the cross-examination, she has denied her diary statement of Ex.P/8 that the accused persons ere dragging the prosecutrix. Mamta Kujur (P.W.-3) has deposed that while they were returning from their school at 5:00 p.m. with her friends they meet the accused persons and both of them caught Reeta and thereafter they got threatened and ran away from there. In the cross-examination by the defence she has stuck to her statement that the accused persons caught the prosecutrix and then they got friends threatened and ran away from there. Ku. Alka Ekka (P.W.-4) has also corroborated the statement of the prosecutrix that while they were returning from the school, the accused persons meet them near Hathi Dongari. The evidence of the prosecutrix is further corroborated from the statement of Filomon Toppo(P.W.-5) father of the prosecutrix who has stated that her daughter has told him that when she was returning from the school, the accused persons forcibly took her near Hathi Dongari and robbed her honour. Dr.(Smt.) Lata Goyal (P.W.-10) who has examined the prosecutrix and gave her report of eEx.P-15 A, has stated that as per the medical examination report, secondary sex characters were fully developed, no external or internal injuries was found on her private parts, her hymen was ruptured, which admitted one finger and during examination she complained pain and suffering. She has further admitted that underwear and *simij* of the prosecutrix was stained with blood and sperm like substance. She has opined that the prosecutrix was subjected to rape and she was not accustomed to sexual intercourse.

13. So far as argument of learned counsel for the appellants that absence of injuries on the back of the prosecutrix belies the allegation of rape because if a lady is subjected to intercourse on a rough surface, abrasions are bound to be there, is concerned, there is no evidence available on record that the place of incident was rough. On the

contrary, the prosecutrix has stated that appellant Arjun Yadav after taking her to Dongari, broke off the bushes and thereafter, laid her on the ground and forcibly raped her. Apart from this, broken bangles and alpine have been seized from the place of incident vide Ex.P/12, which has been proved by the investigating officer. The version of prosecutrix is also corroborated from the F.S.L. report of Ex.P/26 wherein underwear, *simij* and vaginal slides of the prosecutrix have been found stained with blood and presence of human sperm has also been confirmed on the vaginal slides, *simij* of the prosecutrix and underwear of the appellant Arjun Yadav.

14. It is settled law that the prosecutrix complaining of having been victim of the offence of rape is not an accomplice after crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at higher pedestal than the injured witness. In the later case, there is injury in the physical form while in the former it is both physical as well as psychological and emotional.

15. In a prosecution for rape under Clause (a) or (b) or (c) or (d) or (e) of Clause (g) of Sub-section (2) of Section 376 of IPC where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, a presumption is available that she did not consent under Section 114A of the Evidence Act.

16. Thus, from the statement of the prosecutrix, which is corroborated from the statements of the independent witnesss in material particulars as also from the medical evidence and report of F.S.L., this Court is of the considered opinion that the prosecution has established the guilt of the accused/appellant beyond reasonable doubt and the trial Court has not committed any illegality or infirmity in convicting and sentencing the appellants under Section 376(2)(g) of the IPC.

17. In the result, both the appeals preferred by the appellants are without substance, the same deserve to be dismissed and are accordingly, dismissed.

Sd/-
DHIRENDRA MISHRA
Judge